



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 553

## IN THE MATTER OF HERBERT KUENDIG

### DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Herbert Kuendig ("Kuendig") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On April 11, 1995, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Kuendig. The Commission has concluded its inquiry and, on November 15, 1995, found reasonable cause to believe that Kuendig violated G.L. c. 268A, §17(a) and (c).

The Commission and Kuendig now agree to the following findings of fact and conclusions of law:

1. Kuendig was, during the time relevant, a Scituate Planning Board member. As such, Kuendig was a municipal employee as that term is defined in G.L. c. 268A, §1.

2. During the time relevant, Kuendig d/b/a Kuendig Design was engaged in architectural design work.

3. In 1992 Larry Deraney ("Deraney") hired Kuendig to redesign a house which had been completely destroyed by fire. Deraney wanted the new house to have an accessory dwelling,<sup>1/</sup> which would require Planning Board approval. Deraney paid Kuendig between \$1,000 and \$1,500 for this design work.

4. In September 1992 Kuendig submitted the design work for the accessory dwelling to the Planning Board and appeared before the board on behalf of Deraney regarding the accessory dwelling permit matter. Kuendig abstained from participation as a Planning Board member on the matter.<sup>2/</sup>

5. Section 17(a) of G.L. c. 268A prohibits a municipal employee from directly or indirectly receiving compensation from anyone other than the municipality in relation to a particular matter<sup>3/</sup> in which the municipality has a direct and substantial interest.

6. The Planning Board's determination regarding Deraney's accessory dwelling permit was a particular matter. The town had a direct and substantial interest in that particular matter.

7. Kuendig received between \$1,000 and \$1,500 for designing the plans for the Deraney's accessory dwelling, which he knew would go before the Planning Board in relation to the issuance of an accessory dwelling permit, and for appearing before the board in relation to that permit.

8. Therefore, by directly receiving compensation from Deraney for designing a plan and appearing before the Planning Board in relation to the Planning Board's determination regarding the accessory dwelling permit, Kuendig received compensation in relation to a particular matter in which the town had a direct and substantial interest, thereby violating §17(a).

9. Section 17(c) of G.L. c. 268A prohibits a municipal employee from acting as agent or attorney for anyone other

than the municipality in relation to a particular matter in which the town has a direct and substantial interest.

10. By appearing before the Planning Board on Deraney's behalf regarding the accessory dwelling permit particular matter, Kuendig acted as Deraney's agent in relation to a particular matter in which the town had a direct and substantial interest, thereby violating §17(c).

In view of the foregoing violations of G.L. c. 268A by Kuendig, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Kuendig:

(1) that Kuendig pay to the Commission the sum of one thousand dollars (\$1,000) as a civil penalty for violating G.L. c. 268A, §17; and

(2) that Kuendig waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: September 17, 1996**

<sup>1</sup>The Scituate Zoning Bylaw c. 14, §200 defines "accessory dwelling" as "a separate housekeeping unit complete with its own sleeping, cooking and sanitary facilities that is substantially contained within the structure of a single-family dwelling or business structure, but functions as a separate unit.

<sup>2</sup>Kuendig understood, based on information provided by the then Planning Board chairman, that he could represent private clients before the Planning Board as long as he abstained as a board member on the matters. As discussed *infra*, Kuendig's understanding was incorrect.

<sup>3</sup>"Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).